

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOYCE J. TAYLOR)	
Claimant)	
VS.)	
)	Docket No. 245,768
WALMART STORES)	
Respondent)	
AND)	
)	
INSURANCE CO. STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Claimant appeals from a Decision entered by Administrative Law Judge Pamela J. Fuller on January 2, 2001. The Appeals Board heard oral argument on July 18, 2001.

APPEARANCES

Claimant appeared by her attorney, Jeffrey A. Mason of Goodland, Kansas. The respondent and its insurance carrier appeared by their attorney, Todd King of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed the record and adopted the stipulations listed in the Decision.

ISSUES

The sole issue on appeal is the nature and extent of claimant's disability, and specifically, whether claimant is entitled to a work disability award in excess of her percentage of functional impairment. Judge Fuller found claimant had failed to prove a work disability and, therefore, awarded permanent partial disability compensation to claimant based upon her percentage of functional impairment. Claimant asks the Appeals Board to grant a 100 percent work disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments made by the parties, the Appeals Board concludes the Decision should be affirmed.

The Appeals Board agrees with the ALJ's analysis of the evidence as set forth in the Decision. The Appeals Board concludes the ALJ Decision sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts Judge Fuller's findings and conclusions as its own as if specifically set forth herein.

Under K.S.A. 44-510e, a claimant's permanent disability award is limited to no more than the percentage of functional impairment when the claimant earns a post-injury wage equal to 90 percent or more of her pre-injury wage. The ALJ found claimant refused respondent's offer of accommodated employment at an hourly wage comparable to her pre-injury wage. Claimant contends the offered employment was not work claimant could perform within the recommended medical restrictions and, for that reason, the wage in that employment should not be imputed to claimant. The Appeals Board disagrees. However, as the record does not establish the number of hours per week that would be available for claimant to work in the accommodated job, it was not possible to determine whether claimant would have earned 90 percent or more of her pre-injury wage. Nevertheless, claimant failed to make a good faith effort to find appropriate employment. The fact finder must therefore impute a wage to claimant based upon her wage earning ability, as construed in Copeland.¹ The record does not contain evidence of claimant's ability to earn wages in the open labor market. But the Appeals Board notes that there is no restriction preventing claimant from working full time in an appropriate job within her restrictions. Even if she earns only the federal minimum hourly wage, claimant retains the ability to earn 90 percent of her pre-injury wage. Thus, under K.S.A. 44-510e(a), claimant is limited to permanent partial disability compensation based upon her percentage of functional impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Decision entered by Administrative Law Judge Pamela J. Fuller, dated January 2, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

¹ Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 176 (1997).

Dated this ____ day of July 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeffery A. Mason, Goodland, KS
Todd King, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director